THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.Nos. 19660 & 19860 of 2005

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% 29.09.2005

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Between:

Paramveer Singh,

Hyderabad and another

…Petitioners

A n d

The Government of Andhra Pradesh

Rep. by its Secretary, Youth Advancement,

Tourism & Culture (Sports), Hyderabad and others.

…Respondents

! Counsel for the Petitioners: Sri V. Hari Haran & Posani Venkateswarlu

^ COUNSEL FOR THE RESPONDENTS: Advocate-General, G.P. for Youth Advancement & Culture (Sports), & M.S.S.Prasad

< Gist:

> Head Note:

? CITATIONS:

[1] 1995 Supp (1) SCC 188

[2] 2003 (4) ALT 32 (D.B)

[3] 2003 (6) ALD 370

[4] (1990) 3 SCC 157

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Writ Petition No.19860 of 2005

Between:

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K.Varun,

Krishna District

…Petitioner

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THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

Writ Petition Nos.19660 & 19860 of 2005

COMMON JUDGMENT:

In these two writ petitions, the petitioners challenge G.O.Ms.No.27, Youth Advancement, Tourism & Culture (Sports) Department, dated 04-06-2005, as illegal, contrary to law, irrational and unconstitutional. They seek consequential directions to the respondents to conduct selections for admission into First Year of Engineering Graduate Courses against the seats reserved in favour of Sports category, in accordance with G.O.Ms.No.103, Higher Education Department, dated 15-07-2000.

2. The petitioners appeared in the Common Entrace Examination conducted for selection of candidates for admission into the undergraduate courses in Medicine, Engineering courses etc. They are from the mathematics stream,` and intended to get admission into First Year of Engineering Courses. The rank secured by them did not entitle them to get admission in the ordinary course.

3. The Government of Andrha Pradesh issued Rules of admission for various courses, year after year. It provided for different kinds of reservations, in the matter of admission into such courses. One such reservation is in favour of candidates, who have excelled in sports and games. 0.5% of seats are reserved for this category. In the prospectus, that was published by the A.P. State Council of Higher Education, in relation to the admission into Engineering Courses, it was indicated that the order of preference and method of selection for the said category of seats, would be on the basis of G.O.Ms.No.103, Higher Education Department, dated 15-07-2000, and two other G.Os. issued on 28-10-2000 and
03-10-2001. While the admission process is in progress, the Government issued G.O.Ms.No.27, dated 04-06-2005, in supercession of the earlier orders. A different list of recognised sports and games, and different list of priorities, were incorporated in this G.O. It was amended through G.O.Ms.No.31, dated
29-06-2005.

4. Both the petitioners have participated and won some medals in South Zone Championships for juniors. These priorties, in relation to winning medals in South Zone Championships, for juniors, were included in the list of priorities at Sl.Nos. 32, 33 and 34, in G.O.Ms.No.103, dated 15-07-2000. They were, however, omitted in the

list of priorities, under G.O.Ms.No.27, dated
04-06-2005, as amended through G.O.Ms.No.31, in the year 2005.

5. The attack of the petitioners on the impugned G.Os is two-fold. They contend that, once the admission process has commenced and the prospectus was issued, indicating that the selection should be on the basis of G.O.Ms.No.103, dated 15-07-2000 , it was not open for the respondents to issue a new set of Rules, with retrospective effect, and at the most the new norms may be applicable from the next academic year onwards. Their second contention is that, even assuming that the impugned G.Os. apply to the current admissions, the omission of South Zone Junior Championships, from the list of priorities, cannot be sustained. It is urged that the most relevant and appropriate level of participation for the candidates seeking admission into first year engineering is, junior level championships, and exclusion of the same is absolutely without any basis.

6. In the counter affidavit filed on behalf of the Government of A.P., it is stated that the impugned G.O. was isued with a view to integrate the entire procedure of selection against seats earmarked for Sports category. It is also stated that the priorities at various levels were decided on the basis of the views expressed by the experts, and after taking into account the importance of events, level of participation etc. The Sports Authority of Andhra Pradesh is said to have been consulted in the process. The amendment impugned to the G.O., is justified on the ground that certain discrepancies were pointed out by various agencies and the same were rectified.

7. Sri V.Hari Haran, and Sri Posani Venkateswarlu, learned counsel appearing for the petitioners, submit that the admission process has commenced, much before the G.Os, came to be issued, and in fact, the State Council of Higher Education published the list of engineering colleges, and the admission programme duly indicating that the selection against the sports category of seats would be on the basis of G.O.Ms.No.103, dated 15-07-2000, and that there was no justification for the respondents in applying the guidelines and criteria, indicated in the impugned G.Os. They contend that such a course would amount to giving retrospective effect to the same, which is impermissible in law. Their other contention is that, there was no justification for the respondents in omitting the most relevant level of participation, *viz*., South Zone Junior Level Championships. They relied upon several decisions rendered by the Supreme Court and this Court, in support of their contentions.

8 . Learned Advocate-General appearing for the rspondents, on the other hand, submits that it is the prerogative of the State to frame Rules for the purpose of regulating admissions to various courses, and that no exception can be taken to the impugned G.Os. He contends that the issue of integrating the procedure for selection of candidates against sports category in various professional courses, was pending for quite some time, and it has ultimately culminated in issuance of the imupgned G.O. He submits that the list of games and sports and priorities was decided after holding extensive and detailed consultation with the expert bodies, and the same cannot be interfered with by this Court. He too relied upon certain precedents, in support of his contentions.

9 . Apart from reservatrions, on the basis of social backwardness and local residence, the admission rules provide for reservations of other categories also, such as those in favour of the children of Ex-servicemen, Physically Handicapped, and in favour of participants in sports. These reservations were dealt with under Government orders issued from time to time, and there is no statutory provision governing them. For this academic year, 0.5% seats are reserved for sports category in the Engineering Courses.

The entrace examination was notified

on 07-02-2005, and it was held two months thereafter. Admission process commenced, almost in the month of May. In the booklet, published by the A.P.State Council of Higher Education, dealing with the admissions into First Year B.Tech. Courses, the list of Games and Sports, recognised for this purpose, and the order of priorities, were indicated. Specific reference was made to G.O.Ms.No.103, dated 15-07-2000. The relevant portion reads as under:

> "(iv) Sports and Games (SP) – ½ % (0.5%) for Sports and Games candidates. Given below is the order of preference for sports as per the Govt., Orders cited.
>
> ((1) G.O.Ms.No: 103 HE (EC-II) Dept., 15th July 2000 (2) G.O.M.No: 149 HE (EC-II) Dept., 28th October 2000 (3) G.O.Ms.No: 725 HE (EC-II) Dept., dated 3rd October 2001)"

Items 32, 33, 34 and 36 of the priorities read as under:

> "32. Representing State in South Zone Championships for Juniors and winning the first place.
>
> 33. Representing State in South Zone Championships for Juniors and winning the Second place.
>
> 34. Representing State in South Zone Championships for Juniors and winning the third place.
>
> 36. Represented the State in Junior or National Championship for Boys/Girls."

This accorded with the list of priorities, published in G.O.Ms.No.103, Higher Education Department, dated 15-07-2000.

10. When the admission process was in progress, the Government issued the impugned G.O. As against 26 recognised games and sports, under G.O.Ms.No.103, a list of 50 events, apart from 7 items, each, in Non-olympic International Events, and National events were annexed to the impugned G.O. The priorities were also expanded to 90. The junior championships, referred to above, were totally omitted. The petitioners, who are otherwise eligible to be considered under the sports category, on account of their participation and accomplishment, were disabled from being considered.

11. The question as to whether the Rules of admission can be modified, after the commencement of the admission process, is no longer *res integra.* In ***Gurdeep Singh v. State of Jammu and Kashmir***[1], the Supreme Court held that it is impermissible for the Rule Making Authority, to alter the Rules, prescribing the criterian for sports category, after the commencement of the admission process. A Division Bench of this Court in ***A.Ranganath v. Andhra University***[2] held as under:

> "It may be open to the University to alter the rule of admission before calling upon the applications but once applications had been called for on the basis of the existing rule position, it was not open for the University authorities, at a later stage to alter said rule of admission."

To the same effect is the judgment rendered by a learned single Judge of this Court in ***A.Kavitha and another v. State of A.P. and another***[3]. Authorities can be multiplied on the subject, and the settled principle is that, Rules cannot be altered, once the admission process has commenced.

12. Learned Advocate-General relied upon the decision of the Supreme Court in ***N.T.Devin Katti v. Karnataka Public Service Commissioner***[4], to contend that the Rules, that are relevant at the time of selection, are to be followed even if they had been changed, after the commencement of selection. That case related to the promotion into a public service. That situation cannot be compared to the one, relating to admissions. Rules of promotions stand on a different footing from those, relating to admissions to educational institutions. Even in the relm of Service Law, the creterion that is stipulated, when applications are invited for selection of appointment; cannot be altered, after the selection process has commenced.

13. He has also relied upon certain other decisions, touching on the power of the Government to frame Rules with retrospective effect. Even as regards that, it needs to be observed that though the Government has the power to frame a Rule, with prospective or retrospective effect, the same is subject to certain limitations. Whether such power exists, the exercise thereof, needs to be justified, with reference to the attendant circumstances.

14. But for the fact that the admission process has almost come to an end, this Court, would certainly have held that the Rules contained in G.O.Ms.No.27, dated 04-06-2005, as amended in G.O.Ms.No.31, dated 29-06-2005, do not apply for the current academic year. Hundreds of students have already been admitted by following the procedure prescribed under the said orders.

15. The record discloses that different sets of Rules were prescribed for the purpose of selection of candidates against the sports category, for different courses. For example, the admissions into engineering Courses were govered by the Rules stipulated in G.O.Ms.No.103, dated 15-07-2000, and those for medical courses were govered by G.O.Ms.No.254, as amended by various G.Os., up to G.O.Ms.No.216, dated 22-07-2004. They are not uniform. The Government thought of integrating of these Rules, and to bring about a common set of Rules, to govern the admissions against the sports category, in all the professional courses. No exception can be taken to such a step. It is also true that the intention of the Government to bring about a change in the Rules, even after commencement of the admission process for Engineering courses, was indicated by incorporating a Note in the prospectus to the following effect:

> "Government is contemplating to issue an integrated sports G.O. for the

academic year 2005-2006, superseding the above GOs."

This precautionary step hardly rescues the State in ignoring the principle laid down in successive judgments, that the Rules of admission cannot be altered or amended after the process has commenced.

16. Since the admissions have almost concluded, this Court does not intend to disturb them by applying the principle in this regard. The things would have been different altogether, had the petitioners approached this Court, before the counselling for selection of candidates for sports category commenced.

17. Now it needs to be seen as to whether there was any justification for excluding priorities in relation to the participation, or winning positions, in junior level championships.

18. The qualifying examination for almost all the professional courses is a pass in intermediate examinations. The age of the students, studying that course permits them to participate in junior level championships. In fact, such a priority was recognised under the extant Rules. In the process of integrating the Rules in G.O.Ms.No.27, dated 04-06-2005, the State has omitted the participation or accomplishments in junior championships, altogether. With a view to know the basis for such exclusion, this Court has summoned the record. A perusal of the same discloses that the Government had adopted the list of priorities, prepared by the Sports Authority of Andhra Pradesh. Hardly any reason was indicated at any level, for omitting such an important priority. When the priorities were expanded to 90, there was absolutely no justification for excluding the most relevant, and including several priorities, which are almost outside the scope of participation by the students of that age group.

19. The non-application of mind in the process is evident from the fact that several items of games, such as, Wrestling, Volley Ball, Boxing, and Wait Lifting were included, twice. This was on account of the fact that those items of games, with the participation of boys and girls, were treated separately ,and even after they were treated as common, the list was continued as it is. Apart from this, there are several other material discrepancies; were noticed, shortly, and the same resulted in issuance of another G.O, within two weeks bringing about substantial amendments. Such things appear to have resulted mostly on account of the anxiety on the part of the Government to bring about an integrated set of Rules, by the time the admissions

into Medical Courses commence and due to lack of proper co-ordination between the rule making authority and specialised agencies.

20. When the career of hundreds of candidates is involved, little more attention ought to have been paid. Whatever may be the margin that can be given, to sustain the various acts and omissions in the entire process, it is difficult to justify the omission of the accomplishments in the South Zone Junior Championships, and participation in National Junior Championships which occur in priority Nos.32,33 34 and 36, in Annexure to G.O.Ms.No.103, dated 15-07-2000. The right of the petitioners cannot be defeated on account of a G.O., which is issued after the admission process has commenced, and which deleted the relevant items, without there being any supporting material. Several games and sports, the names of which are not known to many, at that age group, have been included. Much more clear and transparent exercise ought to have been undertaken, before such items were included, lest, the people, at large, gain an impression that transperancy was lacking in the process.

21. For the foregoing reasons, the writ petitions are partly allowed, directing that in the list of priorities in G.O.Ms.No.27, dated , 04-06-2005, as amended through G.O.Ms.No.31, dated 29-06-2005, the junior national championship, which figured as items 32,33 and 34 to Annexure-I of G.O.Ms.No.103, dated 15-07-2000, shall be added as items 26-A, 26-B, and 26-C, respectively, and that the cases of the petitioners shall be considered on that basis forthwith. The 1st respondent shall undertake a thorough review of the entire matter and publish the relevant Rules, if necessary, by carrying out requisite amendments, well in advance, before commencement of the next academic year.

22. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt.29-09-2005.

Note:

L.R. copy to be marked.

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